



Paper No. 16

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APR 03 2003

OFFICE OF PETITIONS

In re reissue Application of :
Debra J. Worsley, Michael T. :
Werstlein, and Richard W. Thaik : **DECISION DISMISSING DECISION**
Application No. 09/231,855 :
Filed: January 14, 1999 :
Attorney Docket No. VN734 :

This is in response to the petition under 37 CFR §1.47, filed October 9, 2002, which is being treated as a §183 waiver of the requirement that all the inventors sign the supplemental reissue declaration.¹

The petition under 37 CFR 1.183 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.183". The request for reconsideration may include a supplemental reissue declaration executed by the nonsigning inventor. This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified reissue application was filed on January 14, 1999, without an executed declaration pursuant to 37 CFR 1.63. Accordingly, the Initial Patent Examination Division mailed a "Notice to File Missing Parts of Application" on February 25, 1999. In reply, applicant filed a declaration executed by all of the inventors on June 28, 1999. In a non-final Office action mailed on April 8, 2002, the Examiner required a supplemental declaration.

In reply, applicant filed an amendment on September 10, 2002. To make timely this reply, applicant included a Certificate of Mailing dated September 4, 2002 and obtained a two month extension of time. The instant petition was filed on October 9, 2002. Accompanying the petition was a supplemental reissue declaration signed by joint inventors Debra J. Worsley and Michael T. Werstlein, but lacking a signature from joint inventor Richard W. Thaik.

¹ A petition under 37 CFR 1.47 only applies to the original oath or declaration. Here, applicant has already filed a declaration in compliance with 37 CFR 1.63 on June 28, 1999.

37 CFR 1.67 states, in pertinent part:

(a) The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

(1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47 may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

In addition, 37 CFR 1.175 states that a reissue declaration must be signed by all of the inventors.²

With the instant petition, applicant has set forth the steps taken to find joint inventor Thaik. Attorney Alan Loudermilk has attested that he performed Internet searches, made calls to Thaik's past employer, and mailed letters to the two last known addresses of Thaik which were never returned.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

The supplemental reissue declaration was required to be signed by joint inventors Worsley, Werstlein, and Thaik. However, only Worsley and Werstlein executed the declaration. Petitioner has demonstrated that a *bona fide* effort was made to locate Thaik. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

However, petitioner has not submitted a supplemental declaration in compliance with 37 CFR 1.63. The declaration filed on October 9, 2002 does not identify the citizenship of Thaik. Accordingly, it does not comply with 37 CFR 1.63(a)(3). In addition, the declaration does not comply with 37 CFR 1.63(c)(1) because it does not list the residence or mailing address of Thaik.

On renewed petition, petitioner must submit a declaration in compliance with 37 CFR 1.63.

Receipt of the Change of Correspondence Address, filed on September 10, 2002, is acknowledged. Future correspondence concerning this application will be mailed to the above address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

² See also MPEP 114.01 (stating that a supplemental reissue oath or declaration in a broadening reissue must be signed by all the inventors).

Telephone inquiries regarding this decision should be directed to
Petitions Attorney Cliff Congo at (703) 305-0272.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions